

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

BARRY CADDEN, *et al.*

Defendants.

No. 14-CR-10363-RGS

DEFENDANTS' JOINT TRIAL MEMORANDUM

In its Order Setting Criminal Case for Jury Trial, dated July 31, 2018, the Court ordered the filing of “a trial memorandum addressing those matters as to which there are foreseeable disputes concerning issues of law.”

Defendants have identified to this Court all matters for which they currently foresee disputes of law, in the form of the Motions in Limine, Motions to Compel and Requests for Jury Instructions, filed previously.

Motions in Limine, Motions to Compel and Requests for Jury Instructions

- Docket No. 1563 Motion in Limine to Prohibit Vicarious Liability Argument by the Government as to Kathy S. Chin
- Docket No. 1564 Motion in Limine to Exclude Evidence of Uncharged Shipments as to Kathy S. Chin
- Docket No. 1565 Motion in Limine to Exclude Evidence of Other Alleged Wrongdoing as to Kathy S. Chin
- **Docket Nos. 1567-1568 Defendants' Motion for an Advance Proffer, Hearing, and Ruling on the Admissibility of Statements and Conduct by Alleged Coconspirators and Memorandum in Support¹**

¹ Defendants suggest that the Court may wish to address the pleadings printed in bold, as temporal priorities.

- **Docket No. 1571** **Supplemental Motion in Limine Regarding Evidence of Patient Harm Relating to Methylprednisolone Acetate**
- Docket No. 1575 Motion in Limine to Exclude NECC WatchList Emails as to Kathy S. Chin
- Docket No. 1578 Proposed Jury Instructions by Kathy S. Chin
- Docket No. 1580 Sealed Motion in Limine to Exclude References to Proposed Government Exhibit 575 and Related Issues
- Docket No. 1581 Defendants' Motion in Limine to Exclude Any Mention of the Recycling Business Adjacent to NECC
- Docket No. 1582 Gregory Conigliaro's Motion in Limine to Exclude Evidence of Communications with Various State Boards of Pharmacy
- Docket No. 1584 Defendants' Motion in Limine to Exclude Evidence of Non-Sterile Testing Results
- Docket No. 1585 Defendant Gene Svirskiy's Joinder in Defendant Kathy S. Chin's Motion in Limine to Exclude Evidence of Uncharged Shipments
- Docket No. 1586 Defendants Gene Svirskiy's and Christopher Leary's Motion in Limine to Preclude the Government from Referring to Methotrexate Being Used to Treat Pediatric Cancer Patients
- Docket No. 1589 Motion to Compel Defendant-identified Exhibit List
- Docket No. 1591 Motion in Limine to Exclude Misleading References to USP Provisions on Remediation for Contamination of Surface Samples
- Docket No. 1592 Motion to Compel Expert Witness Disclosures
- Docket No. 1593 Motion to Exclude Case-Agent Testimony Regarding the Investigation
- Docket No. 1594 Motion to Exclude Post-Contaminated Shipment/Recall Efforts
- Docket No. 1595 Defendant Gene Svirskiy's Motion in Limine to Exclude All References to His Marriage to Inna Svirskiy
- Docket No. 1596 Motion in Limine to Exclude Misleading References to Pharmacy Technician "License" or "Licensing" in Massachusetts

- Docket Remaining Defendant's Request for Jury Instructions²
No. 1597
- Docket Defendant Gene Svirskiy's Motion in Limine to Exclude Evidence of
No. 1598 Lorazepam Allegedly Filled into Vials at NECC
- Docket Motion to Exclude Improper Summary Exhibits
No. 1600
- Docket Motion in Limine to Exclude Exhibits Regarding Erroneous Test Result of
No. 1602 Mannitol on August 29, 2012
- **Docket Defendants' Motion in Limine Regarding Objectionable Trial
No. 1603 Practices by the Government**
- Docket Defendants' Motion to Adopt and Reissue Certain in Limine Rulings from
No. 1604 the Cadden and Chin Trials
- Docket Defendants' Motion in Limine to Exclude Government Exhibit 129 –
No. 1609 Excerpts of Sales and Training Videos
- Docket Motion for Joinder in Defendant Kathy Chin's Motion in Limine re
No. 1610 Uncharged Shipments

Jury Questionnaire and Neutral Case Summary

Additional legal issues may be presented by Remaining Defendants' Proposed Jury Questionnaire and Neutral Case Summary (Docket No. 1599).

Defendants also maintain their legal positions on matters raised in previously filed Motions to Dismiss, and reserve the right to readdress those issues when appropriate. All mentioned documents are included herein by reference.

For purposes of evidentiary objections made by one or more Defendants, whether made orally, at trial, or in writing, via a motion in limine, Defendants respectfully request that an objection by one be deemed an objection by all.

² These requested instructions are largely based on those given in the Barry Cadden and Greg Chin trials. For clarity and ease of reference, Defendants have attempted to highlight in the proposed instructions where they may substantively differ from the Cadden/Chin instructions.

Respectfully submitted,

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Date: September 18, 2018

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was filed on September 18, 2018 via the ECF system, and was sent electronically on that date to the parties' counsel of record.

/s/ John H. Cunha Jr.

John H. Cunha Jr.